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In The

Supreme Court of the United States

October Term, 1996

JAMES L. SAFFLE, Director, RON WARD, Warden of Oklahoma State Penitentiary; MICHAEL ROARK, Chairman of the Board of Corrections; HUGH REED; JOE R. MANNING JR.; DANIEL BINTZ; RANDY WHITE AND BEVERLY YOUNG; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Petitioners,

v.

BOBBY BATTLE, Class Representative for all Persons Incarcerated by the Oklahoma Department of Corrections,

Respondents,

and

UNITED STATES OF AMERICA,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit After Remand From The Supreme Court

PETITION FOR WRIT OF CERTIORARI

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February, 1997

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QUESTIONS PRESENTED

1. In a twenty-five year "structural injunction" suit over prison conditions, does a 1982 finding that prison system is constitutional deprive federal courts of authority to enforce remedial compliance orders and injunctions left in effect where respondent parties lack standing as there can be no actual injury?

2. In a twenty-five year "structural injunction" suit over prison conditions, does the Prison Litigation Reform Act of 1996 mandate termination of all prospective injunctive relief where there has been a finding of constitutionality since 1982?

3. Can post-judgment injunctions and orders be enforced by contempt proceedings contrary to Fed. R. Civ. P. 65(d) which prohibits the creation of injunctions by reference to other documents?

LIST OF PARTIES

The parties to this proceeding on *Petition for Writ of Certiorari* are:

Petitioners:

(Defendants in the District Court and Appellees in the United States Court of Appeals for the Tenth Circuit in their official capacities only, automatic substitutions indicated below):

LARRY FIELDS, now JAMES L. SAFFLE, Acting Director:

DAN REYNOLDS, now RON WARD, CALVINO S. MUSE, HUGH REED WILLIAM EVANS, now BEVERLY YOUNG PHIL DESSAUER, now HUGH REED, JOE R. MANNING, JR. GREGORY H. HALL, now MICHAEL ROARK and DANIEL BINTZ

Respondents:

(Plaintiffs in the District Court and Appellants in the United States Court of Appeals for the Tenth Circuit):

Bobby Battle, Class Representative, for all persons incarcerated by the Oklahoma Department of Corrections.

United States of America, Intervenor under 42 U.S.C. § 2000h-2

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PRELIMINARY STATEMENT 1

OPINION BELOW 3

STATEMENT OF JURISDICTION 3

STATUTORY AND CONSTITUTIONAL PROVISIONS 4

STATEMENT OF THE CASE 6

All of this court's orders and injunctions as modified heretofore remain in full force and effect.... 8

I. THE TENTH CIRCUIT'S RENEWED INSTRUCTIONS TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING ON POST-JUDGMENT INJUNCTIONS AND ORDERS IS EXTRA-JURISDICTIONAL AND CONTRARY TO THE LIMITED POWERS OF ARTICLE III COURTS TO ENTERTAIN CASES WHERE THERE IS NO STANDING, NO INJURY-IN-FACT AND NO IMMINENT DANGER OF ACTUAL INJURY ... 9

A. ONCE THE DISTRICT COURT AND THE APPELLATE COURT FOUND THAT THE OKLAHOMA PRISON SYSTEM MET CONSTITUTIONAL STANDARDS, THE DISTRICT COURT HAD NO JURISDICTION TO ENFORCE THE OUT-DATED INJUNCTIONS AND PROPERLY DISSOLVED THEM..... 11

TABLE OF CONTENTS – Continued

Page

B. ONCE THE DISTRICT COURT PROPERLY DISSOLVED THE INJUNCTIONS, THE TENTH CIRCUIT'S ORDER DIRECTING AN EVIDENTIARY HEARING WAS EXTRA-JURISDICTIONAL 13

1. The district court since 1982 is without jurisdiction and the parties are without standing to raise and have considered new factual allegations 13

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED 15

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings 16

B. The prospective relief contained in the "orders and injunctions" is not narrowly drawn, not the least intrusive means to correct violations of federal rights, as required by PLRA and is not enforceable by contempt 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page

Cases Cited

Battle v. Anderson, 708 F.2d 1523 (10th Cir. 1983), *cert. dis.*, 465 U.S. 1014, 104 S. Ct. 1019 ..... 7, 11

Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986) 7, 12, 14

Battle v. Fields, Order and Judgment, Nos. 95-7164 and 96-7013, *cons.* 14

Bell v. Wolfish, 441 U.S. 520 (1979) 17

Board of Ed. of Oklahoma City Publ. Schools v. Dowell, 498 U.S. 237 (1991) 9, 20

Consumer Gas & Oil, Inc. v. Farmland Industries, Inc., 84 F.3d 367 (10th Cir. 1996) 18

Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 128 L.Ed.2d 811 (1994) 8

Freeman v. Pitts, 503 U.S. 467 (1992) 9, 20

Insurance Corporation of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982) 10

Lewis v. Casey, ___ U.S. ___, 116 S. Ct. 2174, 135 L.Ed.2d 606 (1996) 10, 12, 19

Milliken, et al. v. Bradley, et al., 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) 9, 10, 20

Missouri v. Jenkins, ___ U.S. ___, 115 S. Ct. 2038, 132 L.Ed.2d 63 (1995) 9, 10, 11, 12, 13, 20

Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996) 1

Rhodes v. Chapman, 452 U.S. 337 (1981) 11

Roe v. Wade, 410 U.S. 113 (1973) 16

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 18

TABLE OF AUTHORITIES – Continued

Page

Schmidt v. Lessard, 414 U.S. 473, 94 S. Ct. 713, 38 L.Ed.2d 661 (1974) 19

Williams v. City of Dothan, 818 F.2d 755 (11th Cir.), *modified*, 828 F.2d 13 (11th Cir. 1987) 19

Wilson v. Seiter, 501 U.S. 294 (1991) 8

STATUTES AND OTHER AUTHORITIES CITED

18 U.S.C. § 3626(A)(1) 5

18 U.S.C. § 3626(b)(2) 6, 15

18 U.S.C. § 3626(g)(7) 15

28 U.S.C. § 1254(1) 3

42 U.S.C. § 1983 ..... 4, 6

42 U.S.C. § 2000h-2 6

Fed. R. Civ. P. 65(d) 1, 18, 19

Prison Litigation Reform Act of 1996 (PLRA)

Pub. L. No. 104-134, 110 Stat. 1321 ..... 1, 2, 15

Pub. L. 96-170, § 1 4

PRELIMINARY STATEMENT

The Tenth Circuit opinion in this case is in conflict with the Fourth Circuit Court of Appeals' opinion of *Plyler v. Moore*, 100 F.3d 365, (4th Cir. 1996), decided November 14, 1996 covering immediate termination of prospective relief in institutional reform cases where there were no findings required by the Prison Litigation Reform Act.

The Tenth Circuit opinion is also in conflict with circuit opinions that require Rule 65(d) to be strictly construed to give effect to its plain, mandatory language prohibiting contempt hearings on alleged violations of injunctions, unless the order granting the injunction sets forth the reasons for its issuance; is specific in terms; described in reasonable detail, ***and not by reference to the complaint or other document***.

The case presents the Court with the opportunity to again define when federal courts must return control of state prison systems to state officials under the Prison Litigation Reform Act of 1996, resolve a conflict among the circuits, and in the process end a twenty-five year old "structural injunction" lawsuit which has lost its reason for existence. The litigation lives on in the form of out-dated post-judgment compliance orders and injunctions against a state prison system. The injunctions' requirements exceed constitutional standards. Both the United States District Court for the Eastern District of Oklahoma and the United States Court of Appeals for the Tenth Circuit determined by 1982 that the Oklahoma prison system met constitutional standards. The Tenth Circuit refuses to return control to state officials, in direct conflict

with decisions of this Court and the Prison Litigation Reform Act.

According to this Court's decisions, the appellate court's and district court's findings that the system is operating constitutionally deprived the district court of power to enforce the injunctions or orders, and post-judgment injunctions should have been dissolved. In addition, the Prison Litigation Reform Act of 1996 (PLRA) Pub.L. No. 104-134, 110 Stat. 1321, prohibits prospective relief against prison officials unless the prospective relief enjoins unconstitutional action, the relief is narrowly drawn, extends no further than necessary and is least intrusive. Under the PLRA, if conditions become constitutional, injunctions must terminate.

Although this court's decisions demonstrate that the injunctions in the instant case should dissolve and the Prison Litigation Reform Act dictates that the injunction must terminate, the Tenth Circuit's Opinion and Judgment, reaffirming its prior order (which was vacated by this Court) directs the district court to hold an evidentiary hearing on the possible dissolution of the injunctions and on Plaintiffs' attempt to enforce (via Rule 70 Fed. R. Civ. P. contempt proceedings) compliance orders and injunctions. The Circuit Court's remand unnecessarily perpetuates pointless post-judgment litigation.

This case is important because unwarranted perpetuation of the injunctions directly contradicts this Court's principle that the federal judiciary's supervision of state public institutions must end and control must be returned to the officials of the public institution in all cases where there is no actual injury-in-fact or imminent danger of

actual injury. The Tenth Circuit's failure to recognize that the district court has no power to continue to enforce post-dismissal injunctions results in recurrent attempts by parties who no longer have standing to relitigate matters resolved fifteen years ago.

OPINION BELOW

The Opinion and Judgment of the United States Court of Appeals is dated November 7, 1996, and was issued sua sponte as an unpublished opinion, *Opinion and Judgment*, Nos. 95-7164 and 96-7013, *cons.* November 7, 1996. (Appendix A). The panel decision reaffirmed the prior order of the Circuit issued March 29, 1996 (Appendix B) and reversed by this Court on October 7, 1996 in No. 95-2090. (Appendix C). The unreported decision of the Eastern District of Oklahoma dissolving post-judgment injunctions is at Appendix D.

STATEMENT OF JURISDICTION

The judgment of the Tenth Circuit was entered November 7, 1996. The enforcement of the opinion was stayed by the Tenth Circuit court of Appeals pending resolution of this petition. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1) permitting review "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree[.]" This Petition for Writ of Certiorari is timely filed within 90 days of November 7, 1996.

STATUTORY AND CONSTITUTIONAL PROVISIONS

United States Code, Title 42:

§ 1983. Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit or equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

Amendment VIII Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Const. Art. III, § 2, cl.1, Constitution of the United States

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between two or more States; – between a State and citizens of another State; – between citizens of different States; – between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

Title 18 U.S.C. § 3626(A)(1) provides as follows:

(A) REQUIREMENTS FOR RELIEF.

(1) PROSPECTIVE RELIEF. (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(B) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

STATEMENT OF THE CASE

Former Oklahoma inmate Bobby Battle filed a 42 U.S.C. § 1983 lawsuit, appearing pro se, in 1972.[1] Battle's complaint challenged his conditions of confinement in the Oklahoma prison system. Plaintiff acquired public interest lawyers who garnered class certification with Mr. Battle as sole class representative. The United States through the Civil Rights Division of the Department of Justice intervened under 42 U.S.C. § 2000h-2, which allows the Attorney General to intervene on issues seeking relief "from denial of equal protection . . . on account of race, color, religion, sex or national origin." Eventually, Oklahoma State officials presented the trial court with a

[1] Mr. Battle has not been incarcerated in the prison system since the system was found constitutional. There is no allegation that Mr. Battle has suffered or will suffer any actual injury-in-fact.

plan to alleviate alleged constitutional deficiencies. The class representative objected, but the court accepted the plan.

By 1982, the district court decided that the system was complying with constitutional requirements. The United States joined defendants and the court in this position. Only the class representative appealed. A panel of the Tenth Circuit affirmed, finding that the system met constitutional standards. *Battle v. Anderson*, 708 F.2d 1523, 1537 (10th Cir. 1983), *cert. dis.*, 465 U.S. 1014, 104 S.Ct. 1019. The Circuit Court, however, decided that the district court should continue to exercise supervisory power until it found that there was *no reasonable expectation that unconstitutional practices would recur. Battle v. Anderson*, 708 F.2d at 1538.

In 1983, the trial court dismissed the entire case, holding that there was no reasonable expectation that unconstitutional practice would recur. *Memorandum Opinion and Order*, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception,[2] *Battle v. Anderson*, 788 F.2d 1421 (10th Cir. 1986). The Tenth Circuit affirmed the district court's decision to dismiss the underlying causes of action, but retained post-judgment injunctions and orders protecting *constitutional violations. Id.* at 1429 (emphasis added).

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[2] The Circuit Court determined that the record did not contain sufficient findings and conclusions to show a "reasonable likelihood" of continued compliance on the racial discrimination claim. *Battle v. Anderson*, 788 F.2d at 1423.

The Circuit let stand the single sentence upon which this case has stood for all these years:

> **All of this court's orders and injunctions as modified heretofore remain in full force and effect.**

In 1995, the district court, recognizing that state officials had met the appropriate standards for dissolution of the out-dated injunctions, notified parties and permitted the opportunity to present argument regarding the dissolution of the injunctions. Comprehending that the left-over injunctions prohibited only behavior which violated **constitutional** requirements, the district court specified that the altered Eighth Amendment standard[3] applied to the old injunctions.

The district court considered the parties' positions regarding the possible dissolution of injunctions and prior findings that the prison system was meeting constitutional standards as well as this Court's post-1982 decisions regarding Eighth Amendment standards. The district court properly dissolved the injunctions.

On appeal, the Tenth Circuit Court of Appeals ordered the case remanded for evidentiary hearings on both the question of dissolution of injunctions and plaintiffs' contempt motions. A petition for certiorari was

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[3] This Court's decisions in *Wilson v. Seiter* 501 U.S. 294 (1991), and *Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) modified the prior standard required to show an Eighth Amendment violation. In addition to showing that a defendant's behavior objectively violated the cruel and unusual punishment clause, these cases require the plaintiff to show that a defendant possessed a culpable state of mind.

sought and granted by this Court, vacating the opinion of the panel and remanding back for consideration of the Prison Litigation Reform Act.

The Circuit Court on remand and only days after receiving the order of this Court, sua sponte reaffirmed its prior order. Defendants again petition for a writ of certiorari.

I. THE TENTH CIRCUIT'S RENEWED INSTRUCTIONS TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING ON POST-JUDGMENT INJUNCTIONS AND ORDERS IS EXTRA-JURISDICTIONAL AND CONTRARY TO THE LIMITED POWERS OF ARTICLE III COURTS TO ENTERTAIN CASES WHERE THERE IS NO STANDING, NO INJURY-IN-FACT AND NO IMMINENT DANGER OF ACTUAL INJURY.

In *Missouri v. Jenkins*, ___ U.S. ___, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995), this Court again acknowledged the limitations in the duration and scope of the federal judiciary's supervision of state institutions. The Court reviewed a long-standing injunction against a Kansas City public school district and determined that the district court's order directing the school district to grant interdistrict pay raises to correct intradistrict racial segregation was outside the scope of the injunction. Relying on *Board of Ed. of Oklahoma City Publ. Schools v. Dowell*, 498 U.S. 237 (1991), *Freeman*, 503 U.S. 467 (1992) and *Milliken*, 433 U.S. 267 (1977) this Court held that federal supervision of the institution was intended as a temporary measure to remedy past discrimination. *Missouri v. Jenkins*, 132 L.Ed.2d at 80, citing *Dowell*, 498 U.S. at 247. As this Court explained, the aim of federal injunctions against

public institutions is the eventual restoration of "state and local authorities to the control of a[n] [institution] that is operating in compliance with the Constitution." *Missouri v. Jenkins*, 132 L.Ed.2d at 81, quoting *Freeman*, 503 U.S. at 489. The Court further stated that federal court decrees which endeavor to eliminate conditions which are not violative of the Constitution exceed the appropriate limits. *Missouri v. Jenkins*, 132 L.Ed.2d at 86, quoting *Milliken* 433 U.S. at 282.

More recently the test for returning control of state systems to state officials was given specificity in *Lewis v. Casey*, ___ U.S. ___, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) issued June 24, 1996. An Article III court is constrained by the rules of standing to remedying only actual injury-in-fact or imminent danger of actual injury. The Tenth Circuit's prior holding in this case that jurisdiction may be retained until the court is satisfied that there is no reasonable likelihood that unconstitutional behavior will return is simply not the law.

As this Court stated in *Insurance Corporation of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*:

> Subject matter jurisdiction . . . is an Art. III as well as statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign.

456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

The long-standing *Battle* orders and injunctions, like the injunctions in *Jenkins*, must be limited in scope and duration. The district court was correct in recognizing that return of control to state officials was mandated. The Circuit Court's remand of the case and instruction to the

district court to hold an evidentiary hearings goes well beyond subject matter jurisdiction and was extra-jurisdictional.

A. ONCE THE DISTRICT COURT AND THE APPELLATE COURT FOUND THAT THE OKLAHOMA PRISON SYSTEM MET CONSTITUTIONAL STANDARDS, THE DISTRICT COURT HAD NO JURISDICTION TO ENFORCE THE OUT-DATED INJUNCTIONS AND PROPERLY DISSOLVED THEM.

Federal courts have the authority to enjoin only actions which violate constitutional standards. *Missouri v. Jenkins,* 132 L.Ed.2d at 86. The supervising court must strive to restore control of an institution operating in compliance with the Constitution to the proper officials. *Id.* at 81. A review of the instant case reveals that both the district court and the appellate court have determined that the prison system is constitutional. Following the district court's 1982 decision that the system was constitutional, a panel of the Tenth Circuit determined that the system met constitutional standards. The panel stated, " . . . we . . . agree that present conditions, as described by the district court appear constitutionally adequate under the standards set forth in *Rhodes*."[4] *Battle v. Anderson,* 708 F.2d at 1537 (10th Cir. 1983). Thus by 1983, even the Tenth Circuit Court found that all the conditions in the Oklahoma prison system were constitutional.

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[4] *Rhodes v. Chapman,* 452 U.S. 337 (1981).

Following affirmation of constitutionality of the prison system, in December of 1983, the district court dismissed the entire case. *Memorandum Opinion and Order*, No. 72-95-C, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception.[5] *Battle v. Anderson*, 788 F.2d 1421 (10th Cir. 1986). The rub is that, the Tenth Circuit also affirmed the district court's decision to leave in effect those injunctions **against constitutional violations.** *Id.* at 1429 (emphasis added).

The findings of the district court in 1982 and 1983 as well as the findings of the Tenth Circuit in 1983 and 1986 repeatedly established that the prison system was meeting constitutional standards. The decisions that no constitutional violations existed unquestionably met the *Missouri v. Jenkins* "ultimate inquiry" for dissolving injunctions against institutions. The judicial determinations that the unconstitutional practices had ceased demonstrated state officials' good faith compliance with the injunctions and indicated that the past unconstitutional practices had been eliminated to the extent practicable. *Missouri v. Jenkins*, 132 L.Ed.2d at 81. In accordance with the decisions of the district court and the Tenth Circuit and with this Court's decisions in *Lewis v. Casey* and

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[5] The Tenth Circuit's 1983 decision affirmed the district court's 1982 decision that the prison system was constitutional and therefore established constitutionality as the law of the case. However, even under the appellate court's 1986 finding that system was constitutional on all claims including the racial discrimination claim. The Circuit Court did not think the record sufficient to show "reasonable likelihood" of continued compliance on the racial segregation claim.

Missouri v. Jenkins, the district court had no jurisdiction to revisit and enforce the old compliance orders.

B. ONCE THE DISTRICT COURT PROPERLY DISSOLVED THE INJUNCTIONS, THE TENTH CIRCUIT'S ORDER DIRECTING AN EVIDENTIARY HEARING WAS EXTRA-JURISDICTIONAL.

The circuit court's requirement that the district court hold an evidentiary hearing following the district court's appropriate dissolution of the injunction was outside the scope of the court's Article III powers and unnecessarily perpetuated the out-dated federal court intervention. The appellate court directed the district court to hear evidence on Plaintiffs' motions to enforce compliance orders and injunctions and the dissolution issues. However, the instruction to hear evidence on these issues was inappropriate.

1. The district court since 1982 is without jurisdiction and the parties are without standing to raise and have considered new factual allegations.

The Tenth Circuit Court remanded the case not only for the district court to determine whether the injunctions should be dissolved but also for the court to hold an evidentiary hearing on Plaintiff's motions to enforce the injunctions and contempt allegations. Plaintiffs' motions, however, are based on new factual allegations. Plaintiffs and the United States seek to relitigate compliance issues

lost in 1982. Plaintiffs seek contempt as the procedural vehicle for the new attack.

The district court has no jurisdiction to hear the newly created compliance allegations. In 1986, the circuit court affirmed the district court's dismissal of all causes of action except racial segregation. The appellate court explicitly found that the lower court's dismissal of the Eighth Amendment claim was without error. *Battle v. Anderson*, 788 F.2d at 1428-29. That Opinion left the district court, if anything, only with the authority to consider compliance issues surrounding the racial discrimination allegations. *Id.* at 1429.

The Circuit Court seems to have, at least in part, recognized its self-created dilemma. The court in its earlier order stated:

> Obviously, [the evidentiary] hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action.

Battle v. Fields, Order and Judgment, Nos. 95-7164 and 96-7013, *cons.*, March 29, 1996.

The Circuit Court half-recognized that the district court cannot hear new allegations at this late date. However, it improperly remanded the case for the district court to hear the new Eighth Amendment allegations introduced in Plaintiffs' motion.[6] The district court no

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[6] Allegations have been made about the use of dayroom space for dormitory bunking of inmates, to triple celling of female inmates and temporary use of old cellhouses for minimum security inmates. All of these new factual allegations are matters not of concern in 1982.

longer has jurisdiction to hear the new allegations, and the district court's consideration of these allegations would permit the Plaintiffs to improperly initiate new causes of action in this twenty-five-year-old litigation. Therefore, the Circuit Court's order remanding this case to the district court is improper and should be vacated.

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED.

On April 26, 1996, the President signed into effect the Prison Litigation Reform Act (PLRA). Section 802 of Title VIII, entitled "Appropriate Remedies for Prison Conditions," amends 18 U.S.C. § 3626. The clear intent of Congress as stated in § 802(b)(1) of the PLRA is that the amended § 3626 "shall apply with respect to all prospective relief[7] [in any civil action with respect to prison conditions] whether such relief was originally granted or approved before, on, or after the date of the enactment of this title."

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding

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[7] Prospective relief" is defined in 18 U.S.C. § 3626(g)(7) as "all relief other than compensatory monetary damages."

by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

Pursuant to the PLRA, the "orders and injunctions" in this case relating to prospective relief (i.e., continued compliance with the injunction) should be terminated. The PLRA requires that all prospective relief terminate unless the trial court has issued findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation. The district court did not, and cannot, make those findings. Once constitutionality was settled, the complaining parties lost standing. There is no longer jurisdiction as there simply can be no actual injury or imminent danger of actual injury. No case or controversy exists since 1982. If a case is no longer justiciable, the case may be resolved at any time, even during this Court's review of a petition for certiorari. *Roe v. Wade*, 410 U.S. 113, 125 (1973).

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings.

According to § 3626(b)(2) of the PLRA, the trial court granting prospective relief must make specific findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right. Absent such findings, § 3626(b)(2) provides that a defendant is entitled to "the immediate termination of any prospective relief."

It cannot reasonably be suggested that the 1979 Order approving the Defendants' plan contains the findings required by § 3626(b)(2). Even assuming that the 1979 Order ever met the PLRA's requirements, the district court and appellate court have determined that the prison system met constitutional standards. Leaving all orders and injunctions "as heretofore modified" in full force and effect was not the type of relief ordered to extend "no further than necessary to correct the federal right."

According to the district court and the Tenth Circuit, no violation of federal rights existed in 1982. Federal supervision should have ended. Prospective injunctive relief must be terminated immediately.

B. The prospective relief contained in the "orders and injunctions" is not narrowly drawn, not the least intrusive means to correct violations of federal rights, as required by PLRA and is not enforceable by contempt.

In the present case, the injunction cannot reasonably be described as extending no further than necessary to correct any violations presently identified. The law of the case in this litigation is that no violation of a federal right exists. As an example, the 1979 decree incorporated standards of the American Correctional Association as well as standards of the American Public Health Association and Life Safety Code. These standards represent goals of the Oklahoma Department of Corrections rather than minimum levels of operation necessary to satisfy the Constitution. *See Bell v. Wolfish*, 441 U.S. 520, 543-44, n. 27 (1979). The State's plan implementing standards such as these

was not an effort to meet the constitutional minimum but was a reflection of state officials' quest "to do more than that which is minimally required by the Constitution [in order] to settle a case and avoid further litigation. . . . " *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992).

The PLRA mirrors the limits established by this Court in grants of relief in institutional reform litigation. In this case, both the district court and the appellate court have found the system constitutional. Therefore, pursuant to the PLRA, the orders and injunctions left in place must be terminated.

The State plan was instituted unilaterally by state officials. This matter has always been addressed to the limited authority of federal courts with no entry of consent order. The PLRA mandates an end to this case.

Further "orders and injunctions, as heretofore modified" are likewise not enforceable by contempt under Rule 65(d), Fed. R. Civ. P. The rule states:

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, ***and not by reference to the complaint or other document***, the act or acts sought to be restrained.

Circuit courts are split on the applicability of the rule. In the Tenth Circuit Rule 65(d) was recently held to be strictly construed to "give effect to its plain, mandatory language." *Consumer Gas & Oil, Inc. v. Farmland Industries, Inc.*, 84 F.3d 367, 371 (10th Cir. 1996) issued May 17, 1996. A court shall refrain from substituting "ad

hoc uncertainty for the rule's uniformity and clarity." *Id.* at 371.

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Schmidt v. Lessard, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974). Other circuits have not strictly construed Rule 65(d). *Williams v. City of Dothan*, 818 F.2d 755, 761 (11th Cir.) (" . . . the inquiry should be whether the parties subject to the injunctive order understood their obligations under the order."), modified, 828 F.2d 13 (11th Cir. 1987).

In this case no one can be sure what specific orders or injunctions "as heretofore modified" might someday be the subject of contempt proceedings. The Court should grant certiorari and enforce the strict reading of Rule 65(d) dismissing the motions for contempt.

CONCLUSION

The Tenth Circuit's reaffirmation of its vacated opinion directed the district court to take action it has no power or authority to take. The district court and the Circuit Court have already established that the Oklahoma prison system met constitutional standards.

The Tenth Circuit's order was contrary to this Court's limitation of perpetual institutional injunctions in *Lewis*,

Milliken, *Freeman*, *Dowell*, and *Jenkins*, and the orders and injunction must be dissolved. Statutorily, pursuant to the PLRA, all prospective relief must be terminated.

This Court should grant certiorari to review the Tenth Circuit's perpetuation of the antiquated compliance orders and injunctions against officials of the Oklahoma Department of Corrections and upon review, remand with instructions to terminate all prospective relief and dismiss all pending motions for contempt.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BOBBIE BATTLE, et al., Plaintiffs-Appellants, v. LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, chairman of the Board of Corrections; and HUGH REED; WILLIAMS EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections, Defendants-Appellees,	)	Nos. 95-7164 & 96-7013 (D.C. No. CV-72-95) (E.D. Okla.)
UNITED STATES OF AMERICA, Plaintiff-Intervenor.	)	

ORDER AND JUDGMENT*

(FILED NOV. 7, 1996)

Before ANDERSON, TACHA, and EBEL, Circuit Judges.

This appeal was originally taken from a district court order, dated November 15, 1995, which dismissed all but one issue in the case and dissolved certain injunctions in this long-standing prison conditions litigation. Our disposition of the appeal, *Battle v. Fields*, No. 95-7164, 96-7013, 81 F.3d 172 (Table), 1996 WL 145675 (10th Cir. Mar. 29, 1996)(unpublished order and judgment), vacated the district court's order, remanded the case for a full and fair evidentiary hearing on the underlying motions, and directed that the case be transferred to a different district court judge. *Id.* at * *2. This case returns to us by mandate from the Supreme Court. The Court's order vacated our order and judgment and remanded the case to us "for further consideration in light of the Prison Litigation Reform Act of 1996." *Fields v. Battle*, 65 U.S.L.W. 3220, 65 U.S.L.W. 3255, 1996 WL 375974, at *1 (U.S. Oct. 7, 1996)(No. 95-2090).

We hereby readopt our previous conclusions, and reaffirm our order and judgment, dated March 29, 1996. Therefore, the district court's order of November 15, 1995, is vacated, and we again remand the case to the

---

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

district court for a prompt hearing on the underlying motions. In light of further proceedings in the district court following our March 29, 1996 order, it is clear that the court complied with our order to reassign the case to a different district court judge. We reaffirm that order on remand.

Initially on remand, the district court should consider the newly enacted Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321 (PLRA). The PLRA purports to establish a new standard by which prison reform decrees are to be judged. To the extent that defendants have moved to modify or terminate the previous injunctions in this case pursuant to 18 U.S.C. § 3626(b)(2), and to the extent that plaintiffs have challenged the constitutionality or other applicability of the PLRA, the district court should consider such challenges to this legislation. If it determines that the PLRA is applicable and constitutional, we direct the district court to the requirement of 18 U.S.C. § 3626(e)(1) that the court "shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions."

Plaintiffs have filed an emergency motion urging this court, in part, to reaffirm our previous stay pending appeal of the district court's order and our reassignment of the case to a different district court judge. Plaintiff-intervenor had responded to the motion. Defendants filed a motion for extension of time to respond. In light of this opinion, plaintiffs' and defendants' motions are denied as moot.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BOBBY BATTLE, et al.,

Plaintiffs-Appellants,

v.

LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

No. 95-7164

(E.D. Oklahoma)

(D.C. No. CV-72-95)

BOBBY BATTLE, et al.; Plaintiffs-Appellants, UNITED STATES OF AMERICA, Plaintiff-Intervenor-Appellant, v. LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections, Defendants-Appellees.	No. 96-7013 (E.D. Oklahoma) (D.C. No. CV-72-95)

ORDER AND JUDGMENT*

(Filed Mar. 29, 1996)

---

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **ANDERSON, TACHA,** AND **EBEL,** Circuit Judges.

On October 28, 1994, the plaintiffs filed a motion to enforce certain injunctions previously entered in this case. On November 17, 1994, the district court issued an order denying the motion, and *sua sponte* dissolving the injunctions and dismissing the case, except for the Fourteenth Amendment segregation issue originally remanded by this court in 1986.

We subsequently vacated the district court's order and remanded the case with instructions to conduct an evidentiary hearing on the plaintiffs' motion and on the issue of dissolution. *Battle v. Fields,* No. 94-7175 (10th Cir. June 27, 1995), Appellants' App. Vol. III, Tab 18. The defendants thereafter filed a motion to terminate the case. The district court then directed the parties to present arguments in writing addressing the following question: "[W]hy shouldn't all of the existing injunctions be dissolved as a matter of law in light of . . . this Court's finding[ ] of compliance in 1983, and the Tenth Circuit affirming of that finding in 1986." Appellants' App. Vol. III, Tab 19, at 5-6. After the parties briefed that issue, the district court determined that "[t]o resolve this legal issue, . . . oral argument and an evidentiary hearing are unnecessary." *Battle v. Anderson,* No. 72-095-C, slip op. at 1 (E.D. Okla. Nov. 15, 1995), Appellants' App. Vol. III, Tab 26. The court then proceeded to enter an order on November 15, 1995, readopting its previous conclusions and once again dissolving the injunctions and dismissing

the case. With respect to the matter of an evidentiary hearing, the court reasoned as follows:

> If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.
>
> . . . .
>
> If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. . . . [A]ny further evidentiary hearing without using present constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Id. at 2-3.

At the plaintiffs' request, we stayed the district court's order pending appeal. The plaintiffs and the United States, as plaintiff-intervenor, filed separate notices of appeal, which we have consolidated.

As a threshold matter, we reject the argument advanced by the defendants that, in substance, this case was concluded in 1983. It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties. Indeed, the district court's November 17, 1994, and November 15, 1995, orders specifically address the dissolution of such injunctions. Additionally, we have previously affirmed the district court's continuing jurisdiction over this litigation and have

explicitly recognized the continuing viability of the injunctions entered by the court. *See Battle v. Anderson*, 788 F.2d 1421, 1428 n.5 (10th Cir. 1986) ("[I]t is unmistak[a]bly clear that the orders and injunctions protecting the inmates against constitutional violations . . . remain in full force and effect."); *Battle v. Anderson*, 708 F.2d 1523, 1538-39 n.4 (10th Cir. 1983) ("If an injunction is to be effective, a court must retain continuing jurisdiction to enforce . . . the terms of its orders. The court cannot be divested of jurisdiction by temporary compliance with the injunction.") (citations omitted), *cert. dismissed*, 465 U.S. 1014 (1984). And, as already indicated, most recently we remanded the case to the district court with express directions to hold a hearing on the plaintiffs' enforcement motion and on the potential dissolution of the injunctions. *See* Appellants' App. Vol. III, Tab 18, at 2.

Regarding the procedural posture of the case, we respectfully disagree with the district court's conclusion that changed legal standards make an evidentiary hearing futile and unnecessary. In a case like this the validity of the parties' allegations and the propriety of dissolving the injunctions and dismissing the case cannot be properly determined *without* an evidentiary hearing. *See Battle*, 708 F.2d at 1539 (The district court " 'is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies.' ") (quoting *Finney v. Arkansas Board of Correction*, 505 F.2d 194, 215 (8th Cir. 1974)). To the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the

court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Accordingly, we again vacate the district court's order and remand this case for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion, filed since our last remand, to dissolve the injunctions and dismiss the case. *Cf. Battle v. Anderson*, 594 F.2d 786, 789 (10th Cir. 1979) (remanding for further evidentiary hearings on defendants' compliance with court's prior orders). Obviously, that hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action. We of course express no opinion on the merits of the parties' motions or any other matter pending before the district court in this case.

Finally, we reluctantly conclude that on remand this case must be assigned to a new judge. The experienced district judge who has handled this case to date has done so with the utmost competence and professionalism. There is no question that the judge has and would continue to treat the parties with scrupulous fairness. However, the very basis for the court's order now on appeal is that an evidentiary hearing will be futile, and its conclusion is foregone. The appearance, not the fact, of bias arising from this reasoning would color future proceedings. The case may be reassigned on remand in accordance with the applicable local rules of the district court.

Accordingly, for the reasons stated above, the order of the district court is VACATED, and the case is REMANDED for further proceedings before a different judge.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. 95-2090

LARRY FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL.,

Petitioners

v.

BOBBY BATTLE, ETC., AND UNITED STATES

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit.

THIS CAUSE having been submitted on the petition for a writ of certiorari and the responses thereto,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321.

IT IS FURTHER ORDERED that the petitioners Larry Fields, Director, Oklahoma Department of Corrections, et al. recover from Bobby Battle, etc., and the United States Three Hundred Dollars ($300.00) for their costs herein expended.

October 7, 1996

Clerk's costs: $300.00

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

BOBBY BATTLE, et al., Plaintiffs	)	
v.	)	No. 72-095-C
PARK J. ANDERSON, et al., Defendants	)	

ORDER

(Filed Nov. 15, 1995)

This matter is before the court pursuant to an order of the United States Court of Appeals for the Tenth Circuit ("the Circuit Court") in *Battle v. Fields*, No. 94-7175 (10th Cir. June 27, 1995). In its order, the Circuit Court found that this court's order of November 17, 1994, denying plaintiffs' motion to enforce certain injunctions and dissolving all existing injunctions in the underlying case, should be vacated and remanded to this court to have a hearing to determine the issues raised by plaintiffs' motion[1] and to determine whether existing injunctions should be dissolved.

The parties have now had that opportunity to be heard on their respective positions, in that on September 21, 1995, the parties were given the opportunity, in fact,

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[1] Plaintiffs conceded, before the Circuit Court and this court, that the only issue raised by plaintiffs in their original motion, i.e., overcrowding at the Lexington facility, has been resolved.

they were directed to file briefs on the issue of whether or not this court should dissolve the prior injunctions in this case as a matter of law. The parties filed briefs, and none requested oral argument. To resolve this legal issue, this court finds oral argument and an evidentiary hearing are unnecessary, and that the parties have been afforded due process. *Dowell ex rel. Dowell v. Board of Educ.*, 8 F.3d 1501 (10th Cir. 1993); *United States v. Colorado*, 937 F.2d 505 (10th Cir. 1991).

In it's [sic] order of November 17, 1994, this court found that the previously entered injunctions were archaic and did not embody current constitutional requirements as enunciated and defined by more recent Supreme Court decisions, and the court dissolved those injunctions as a matter of law. *See, Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970 (1994); *Wilson v. Seiter*, 501 U.S. 294 (1991). Plaintiffs have not addressed the obvious question of why the previous injunctions issued by this court are necessary to maintain and enforce constitutional standards in light of recent Supreme Court decisions setting modern constitutional standards for the operation of prisons. If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.

This court notes, however, that other courses of action may be appropriate. As stated in this court's previous order, the class may urge recertification and new injunctions under current case law in a new lawsuit, or

the Circuit Court may agree with this court's finding that the issues raised by counsel are being addressed in a more efficient manner through individual prisoner §1983 petitions.

If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. In the unlikely event the Circuit Court directs additional evidentiary hearings on constitutionality, those hearings would be conducted within the parameters of the latest Supreme Court decisions, and the additional facts and status of the prisoners would be measured by the current Supreme Court constitutional standards. If additional evidentiary hearings to determine constitutionality are required, a significant new issue would be whether or not the defendants' have a defense based upon lack of intent due to a failure of the state legislature to appropriate funds or a "cost" defense. *Wilson,* 501 U.S. at 301-302. Because this is an open issue which has not been addressed by the Supreme Court, any further evidentiary hearing without using present constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Since this court's order dissolving the prior injunctions, the plaintiffs have filed requests for injunctions, contempt and sanctions concerning the use of the condemned East cellhouses and alleged triple celling at the Mabel Basset Correctional Center. These issues, however, were not before the court at the time this court entered its order of November 17, 1994, dissolving the prior injunctions and ending its supervisory role over the Oklahoma

Penal System.[2] Therefore, this court finds those requests for further injunctive relief to be premature until this court's order of November 17, 1994, and this order, dissolving the prior injunctions on which the plaintiffs' current requests for injunctive relief are based, have been resolved.

Accordingly, after notice to and briefing by the parties, this court adopts its findings and order of November 17, 1994, dissolving the prior injunctions entered herein, and dismissing this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986.

IT IS SO ORDERED this 15 day of November, 1995.

/s/ Frank H. Seay
FRANK H. SEAY
United States District Judge

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[2] This court retains jurisdiction over the Fourteenth Amendment racial segregation issue.

No. 96-1241

Supreme Court, U.S.
FILED
MAR 7 1997
CLERK

In The

Supreme Court of the United States

October Term, 1996

JAMES L. SAFFLE, Director; RON WARD, Warden of Oklahoma State Penitentiary; MICHAEL ROARK, Chairman of the Board of Corrections; HUGH REED, JOE R. MANNING, JR., DANIEL BINTZ, RANDY WHITE and BEVERLY YOUNG, all members of the Oklahoma Board of Corrections; and OKLAHOMA BOARD OF CORRECTIONS,

Petitioners,

v.

BOBBY BATTLE, Class Representative for all persons incarcerated by the Oklahoma Department of Corrections,

Respondents,

and

UNITED STATES OF AMERICA,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit After Remand From The Supreme Court

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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March 1997

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QUESTION PRESENTED

1. Whether the court of appeals erred in remanding this case to the district court for consideration of petitioners' motion to terminate previously-entered permanent injunctions in light of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (Tit. VIII of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, 110 Stat. 1321-66) (to be codified at 18 U.S.C. § 3626).

TABLE OF CONTENTS

Page

Question Presented i

Table of Authorities iii

Opinion Below 1

Jurisdiction 1

Statement of the Case 1

Argument 18

Conclusion 28

TABLE OF AUTHORITIES

Page

CASES

Battle v. Anderson,

564 F.2d 388 (10th Cir. 1977) 2, 4, 5, 6

614 F.2d 251 (10th Cir. 1980) 2

594 F.2d 786 (10th Cir. 1979) 6

708 F.2d 1523 (10th Cir. 1983), *cert. dismissed*, 465 U.S. 1014 (1984) 8, 14, 22

788 F.2d 1421 (10th Cir. 1986) 10, 14, 23

970 F.2d 716 (10th Cir. 1992) 11

376 F. Supp. 402 (E.D. Okla. 1974) 2, 3, 4

447 F. Supp. 516 (E.D. Okla. 1977) 3, 4

457 F. Supp. 719 (E.D. Okla. 1978) 6, 26

No. 72-95-C (E.D. Okla. May 4, 1979) 7

No. 72-95-C (E.D. Okla. Dec. 30, 1983), *aff'd in part, vacated in part*, 788 F.2d 1429 (10th Cir. 1986) 9, 23

No. 72-95-C (E.D. Okla. Dec. 22, 1989), *reversed*, No. 90-7012 (10th Cir. Oct. 3, 1991) 11

Battle v. Fields,

No. 95-2090 (U.S. Oct. 7, 1996) 15, 19

No. 94-7175, 59 F.3d 178 (10th Cir. 1995) 11

No. 95-7164 (10th Cir. Dec. 18, 1995) 13

Nos. 95-7164, 96-7013 (10th Cir. Nov. 27, 1996) 17, 18

No. 72-95-C (E.D. Okla. Nov. 17, 1994), *vacated*, 59 F.3d 178 (10th Cir. 1995) 11

TABLE OF AUTHORITIES – Continued

Page

No. 72-95-C (E.D. Okla. Sept. 21, 1995)..... 12

No. 72-95-B (E.D. Okla. Oct. 8, 1996)..... 17

Board of Educ. v. Dowell, 498 U.S. 237 (1991).....21, 23

Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 389 U.S. 327 (1967)..... 19

Freeman v. Pitts, 503 U.S. 467 (1992).....21, 23

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251 (1916)..... 19

Hutto v. Finney, 437 U.S. 678 (1978)..... 23

Lawrence v. Chater, 516 U.S. ___, 116 S.Ct. 604, 133 L.Ed.2d 545 (1996).....19, 20

Milliken v. Bradley, 433 U.S. 267 (1977) 23, 25

Missouri v. Jenkins, 515 U.S. ___, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995)..... 21

Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. ___, 112 S. Ct. 2791, 120 L.Ed.2d 674 (1992), *upon remand, Casey v. Planned Parenthood of Southeastern Penn.*, 978 F.2d 74 (3d Cir. 1992) 20

Quern v. Jordan, 440 U.S. 332 (1979)..... 20

Rhodes v. Chapman, 452 U.S. 337 (1981)..... 8

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).....21, 22

Virginia Military Inst. v. United States, 508 U.S. 946 (1993)..... 19

Watson v. Fort Worth Bk. & Trust, 487 U.S. 977 (1988)..... 21

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTION, STATUTES, AND RULES

U.S. Const.:

Amend. I 1, 2, 3

Amend. VIII 1, 2

Amend. XIV (Due Process Clause) 1, 2

Omnibus Consolidated Rescissions and Appropriations Act of 1996,

Pub. L. No. 104-134, 110 Stat. 132 14

Prison Litigation Reform Act of 1995, 110 Stat. 1321-66:

§ 802(a), 110 Stat. 1321-68 (to be codified at 18 U.S.C. § 3626(b)(2)) 14, 25

§ 802(a), 110 Stat. 1321-68 (to be codified at 18 U.S.C. § 3626(b)(3)) 26

42 U.S.C. § 1983 1

42 U.S.C. § 2000h-2 2

Fed. R. Civ. P. Rule 60(b) 12

MISCELLANEOUS

R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* (7th ed. 1993) 19

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is unpublished, but the decision is noted at 100 F.3d 967 (Table).

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1996. The petition for a writ of certiorari was docketed February 6, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

1. Respondent Bobby Battle initiated this class action in 1972 for himself and on behalf of all other inmates incarcerated within the Oklahoma State Penitentiary system. The complaint alleged that petitioners' operation of the State's penitentiary system deprived the class of rights secured by the First, Eighth, and Fourteenth Amendments to the Constitution, in violation of 42 U.S.C. § 1983. *Battle v. Anderson*, 376 F. Supp. 402, 407 (E D. Okla. 1974).[1]

[1] This case originally covered the Oklahoma Penitentiary and a system of prisons under its control. Later, after Oklahoma consolidated its prison system into a single state wide system, the district court's orders were extended to cover the entire state system (OSP).

The United States intervened in the action pursuant to 42 U.S.C. § 2000h-2. *Battle v. Anderson*, 614 F.2d 251, 253 (10th Cir. 1980); *Battle v. Anderson*, 564 F.2d 388, 392 (10th Cir. 1977). The United States' initial complaint in intervention alleged that petitioners were operating the OSP on a racially segregated basis with respect to housing, work assignments, and other privileges and activities. *Battle v. Anderson*, 376 F. Supp. at 407. The United States later amended its complaint to allege, in addition, arbitrary disciplinary action against inmates of all races, in violation of the Due Process Clause of the Fourteenth Amendment; cruel and unusual conditions of confinement, in violation of the Eighth Amendment; unreasonable restrictions on inmates' religious practices and correspondence, in violation of the First Amendment; and infringement of inmates' right of access to the courts. *Id.* at 407-08.

After a bench trial in March 1974 the district court held that nine areas of OSP operation violated the Constitution. Specifically, the court held that petitioners had violated, and continued to violate, the Eighth Amendment's prohibition against cruel and unusual punishment by imposing on inmates unreasonable and excessive use of chemical agents as a punitive measure, inadequate medical care, and prolonged periods of solitary confinement in unsanitary and dangerous conditions.[2] The court further found that petitioners were engaging in racial

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[2] Those conditions included placing inmates in subterranean isolation, known as the "hole," for prolonged periods, and depriving inmates of food, clothing, bedding, light, and basic personal hygiene items. *Battle v. Anderson*, 376 F. Supp. at 423-24.

segregation and discrimination with regard to inmate housing, discipline, and work assignments; that petitioners' disciplinary procedures violated due process; that OSP restrictions on inmates' receipt of correspondence and periodicals violated the First Amendment; that petitioners were violating the inmates' freedom of religion; and that petitioners were not providing inmates constitutionally adequate access to the courts. *Battle v. Anderson*, 376 F. Supp. at 408-28. The court enjoined the unlawful activities and ordered petitioners to propose a remedial plan. *Id.* at 428-37. Petitioners did not appeal.

The district court conducted further hearings between 1974 and 1977 concerning the conditions of confinement prevailing throughout OSP and petitioners' remedial efforts, and became "equally convinced that the inmate conditions now existing present an immediate and intolerable threat to the safety and security of inmates, prison personnel and the people of the State of Oklahoma with attendant monetary losses and costs of staggering proportions." *Battle v. Anderson*, 447 F. Supp. 516, 517 (E.D. Okla. 1977).[3] The court also identified numerous

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[3] The uncontested evidence before the court detailed threatening conditions in several OSP institutions, including, among other things: non-existent fire-fighting capabilities, rodent and vermin infestation, inadequate plumbing and water systems, the absence of ventilation necessary to prevent the spread of disease, and structural problems, including the separation of steel bulkheads. *Battle v. Anderson*, 447 F. Supp. at 522-23. The court observed that petitioners' "neglect, apathy and deliberate disregard for human decency and rights contributed directly to the tragic loss of lives and $20 million in state property damages" that resulted from a July 1973 riot at the State Penitentiary at McAlester, Oklahoma. *Id.* at 517. The court found that "the conditions which precipitated and caused

instances of non-compliance by petitioners with the court's prior order, and the "intransigence" of OSP officials or their counsel. *Id.* at 517-19, 524. The district court found, among other things, that petitioners' continued use of outdated cellhouses, and grossly inadequate sewage systems, food facilities, gas lines, fire safety systems, and plumbing created serious health, safety and security risks. *Id.* at 521-24.

Although the district court had been "loath to consider the necessity of closing the Oklahoma State Penitentiary at McAlester as a direct or indirect result of its orders," 376 F. Supp. at 428, petitioners' own evidence conceded the seriously deficient condition of many of its institutions, 447 F. Supp. at 520-22, and recommended that the entire Granite facility "be phased out over a ten to fifteen year period." *Id.* at 523.

Petitioners did not challenge or appeal the district court's findings and conclusions regarding unconstitutional conditions, but appealed the district court's remedial order claiming that the order impermissibly interfered with the State's administration of its prison system. *Battle v. Anderson*, 564 F.2d 388, 397-98 (10th Cir. 1977).[4] The court of appeals began its review by noting

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the disastrous riot of 1973 at McAlester now prevail throughout the system." *Ibid.*

[4] The court of appeals noted that the sole issue in petitioners' 1977 appeal concerned the remedy, not whether OSP conditions were constitutional: "Unconstitutional conditions now, and for a long time, have prevailed in the Oklahoma State penal system . . . [t]here is no evidence to the contrary and counsel for the defendants has never seriously argued to the contrary. Since the unconstitutionality of the

that it shared the district court's reluctance to intervene in state prison administration:

> We, too, abhor any situation or circumstance requiring the intervention of the federal courts in matters involving the administration, control and maintenance by the sovereign states of their penal systems.

564 F.2d at 392. In its decision, however, the court of appeals explicitly noted that, contrary to the claims of petitioners, the district court had never dictated the means by which petitioners were to achieve constitutionality. *Id.* at 398. Rather, "[t]he details and administration of a program are left solely to the discretion of the defendants. The Court is interested in ends and not means so long as they are lawful." *Ibid.* The court of appeals also observed:

> The evidence of existing environmental health and safety problems in the system is overwhelming. There is no doubt that the overcrowding increases the incident of both infectious-communicable diseases. . . . Defendants offer no assurances that in the do-nothing interim requested by them, that inmate fatalities or permanent impairment of the physical and mental health of inmates will not result from these causes. It is a harsh thing to say that the lives and health of inmates must be sacrificed to the administrative convenience of the defendants * * * still the State has not prevented the degenerated overcrowding conditions which

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conditions is undisputed the only real question is how much longer plaintiffs' class must endure their constitutional deprivations." *Battle v. Anderson*, 564 F.2d at 397.

> have come to pass at the Oklahoma State Penitentiary at McAlester and the Oklahoma State Reformatory at Granite.

Id. at 398, 403.

In 1978 the district court conducted hearings and appraisals of possible remedies, culminating in a remedial order, reported at 457 F. Supp. 719 (E.D. Okla. 1978). The court found that petitioners were not in substantial compliance with orders concerning disciplinary process, racial segregation, use of chemical agents, court access, health care, and conditions of confinement, and set firm deadlines to comply with its orders. *Id.* at 721-25, 738-40. Again, petitioners did not contest evidence that outdated cellhouses were unfit for human habitation. *Id.* at 723-26. Much of the evidence was presented by petitioners' own witnesses. *Ibid.*

Petitioners did not challenge or appeal the constitutional foundations of the district court's 1978 order but appealed the remedial requirements of the order. *Battle v. Anderson*, 594 F.2d 786, 792 (10th Cir. 1979). The court of appeals began by reiterating its reluctance to sanction federal intervention in state prison administration and found that the district court "may not have provided the State of Oklahoma adequate opportunity to develop those objectives it was then pursuing to accomplish the remedies ordered by the Court." *Id.* at 789. The court of appeals, however, also observed that, "[i]n our view, the District Court has not 'closed the door' to alternative remedies. The State of Oklahoma has not sought a modification or amendment to the order of September 11, 1978." *Id.* at 792. Accordingly, the court of appeals "decline[d] to affirm, reverse or modify the District Court's order," *id.* at 793, remanded the case to allow petitioners to propose remedies, and instructed: "[t]he

State of Oklahoma is requested to address itself to all possible remedial steps in order to comply with the existing deficiencies." *Ibid.*

In 1979 petitioners, in accordance with the court of appeals' instructions, proposed a plan to remedy OSP's continuing constitutional deficiencies. In that proposal, petitioners agreed to, among other things, limit the number of inmates per cell; close the East and West Cellhouses at McAlester by June 1981; renovate the reformatory at Granite or close it by January 1982;[5] bring water, sewage, and electrical systems into compliance with state laws; bring the prisons into compliance with the standards of the American Correctional Association, the American Public Health Association, and the Life Safety Code; and to comply with the district court's prior orders regarding racial segregation, medical care, and access to the courts. *Battle v. Anderson*, No. 72-95-C (E.D. Okla. May 4, 1979) (order approving defendants' plan). The district court entered petitioners' proposed plan as an order on May 4, 1979. *Ibid.*

2. Petitioners later sought and were granted extensions of the deadlines for closing the condemned cellhouses. *Id.* (Aug. 11, 1981) (findings and order granting until July 31, 1983); *Id.* (July 19, 1992) (order granting until Nov. 18, 1983). In addition, in April 1982 the district

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[5] The State's plan included vacating the cellhouses which prior orders and the State's own evidence found to be unfit for human habitation. Those cellhouses included the East and West cellhouses at the Oklahoma State Penitentiary at McAlester, Oklahoma, and the East and West cellhouses at the Oklahoma State Reformatory at Granite, Oklahoma (hereafter referred to as the "condemned cellhouses").

court authorized double celling on an indefinite basis provided that constitutional requirements were met. *Battle v. Anderson*, 708 F.2d 1523, 1527 (10th Cir. 1983).

3. The district court conducted an evidentiary hearing in October 1982 on the question whether the constitutionality of double celling in OSP was no longer in doubt under *Rhodes v. Chapman*, 452 U.S. 337 (1981). The court stated that it "considered this case as one of equity whereby the court was required to do what is 'right' between the parties in the area of operation of the Oklahoma penal system within constitutional limits." *Battle*, 708 F.2d at 1532. The district court noted that the Oklahoma penal system was overcrowded, but concluded on the basis of the evidence presented that double celling was not then creating unconstitutional conditions of confinement. *Ibid.* The court, however, retained jurisdiction over that issue because it also found that past unconstitutional conditions threatened to recur, finding:

> while the Court would not conclude from the evidence presented that the system has become unconstitutional in its operation, the system is clearly in the state of rapid decline. The system has slipped into the twilight of constitutional compliance and could well slip into its previous unconstitutional condition.

Battle, 708 F.2d at 1539. The condemned cellhouses remained open at the time of the district court's decision, solely because the court had granted petitioners' request for an extension of the deadline for closing the cellhouses. Petitioners did not contend that they were otherwise in substantial compliance with the injunctions, or

seek to modify the injunctions except with regard to double celling. *Ibid.*

In September 1983 the district court conducted a further evidentiary hearing on the status of petitioners' compliance. After hearing the evidence but before ruling, Judge Luther Bohanon recused himself and this case was reassigned to Judge Frank Seay. Three weeks after being assigned the case, Judge Seay ruled that petitioners were not in compliance with the court's injunctions. *Battle v. Anderson*, No. 72-95-C (E.D. Okla. Dec. 30, 1983) (memorandum opinion and order). The totality of the court's findings concerning compliance read:

> There are four subjects of previous court orders that are still found to be inadequate and not in compliance: racial integration, access to courts, equal protection guarantees for women, and vacating to human habitation the East and West Cellhouses * * * Racial integration of the occupants of double cells is found to be almost nonexistent in the Oklahoma prison system. * * * The court finds that the East and West Cellhouses are still occupied despite their ordered vacation over four years ago. However, the court is satisfied with the assurances from [OSP] director Meachum and Governor Nigh that the cellhouses will be vacated as soon as feasible.

Id. slip op. at 6-7. Despite such findings, the district court discharged the court monitor and dismissed the case, but expressly held that "[a]ll of this court's orders and injunctions as modified heretofore remain in full force and effect." *Id.* slip op. at 10. Again, petitioners did not seek to lift the injunctions.

The district court's decision was reversed and remanded for further proceedings with respect to racial segregation and discrimination. *Battle v. Anderson*, 788 F.2d 1421, 1425 (10th Cir. 1986). In affirming the district court's decision to end its active supervision of the remaining claims, the court of appeals observed that "it is unmistakably clear that the orders and injunctions protecting the inmates against constitutional violations, as previously modified, were in no way intended to be relaxed and that they remain in full force and effect." *Id.* at 1428 n. 5. The court further noted that "plaintiffs may by further proceedings in the district court seek relief from any violations of those previous orders and injunctions protecting their constitutional rights." *Id.* at 1429. Petitioners had urged the court of appeals to affirm the order leaving the injunctions in place:

> [T]his Court may conscientiously affirm the district court's dismissal of supervisory jurisdiction, *particularly* where the district court left in force and effect its prior injunctions as modified.

Brief of Appellees, No. 84-1026, at 104 (10th Cir. filed June 1984) (emphasis supplied).

Petitioners later acknowledged on various occasions the continued viability of the injunctions. In 1989 petitioners unsuccessfully sought a modification of the injunctions to permit renovation of one of the condemned cellhouses, and submitted to the district court in support of that motion:

> The Defendants are well aware that this Court left in full force and effect all of its previous remedial injunctions when it ended day to day supervision of the Department of Corrections.

> These Defendants further recognize their obligation to return to Court if they want to alter the Court's previous injunction closing the East Cell House, hence this Motion. . . . The Defendants have recognized their obligation to seek modification of the Court's order before placing inmates in the East Cell House.

Memorandum Brief of Defendants in Support of Motion to Modify Injunction to Renovate and Permit Inmates to Occupy Closed Cell House, No.72-95-C, at 7, 9 (E.D. Okla. filed May 1, 1989).[6] See *Battle v. Anderson*, 970 F.2d 716 (10th Cir. 1992).

4. The current dispute began in October 1994 when, contrary to the injunctions, petitioners began using day rooms in a maximum security area as open dormitories. Respondents sought specific orders to enforce the injunctions prohibiting that practice. R. 113. Without affording respondents notice or a hearing, the district court denied the motion and, *sua sponte*, terminated the injunctions and its "supervisory jurisdiction," with respect to all areas other than racial segregation. *Battle v. Fields*, No. 72-95-C, slip op. at 14-15 (E.D. Okla. Nov. 17, 1994).

The court of appeals vacated the order and remanded the case for further proceedings. *Battle v. Fields*, No. 94-7175, slip op. 2, 59 F.3d 178 (10th Cir. 1995) (Table).

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[6] In 1989 the district court again dismissed the racial discrimination and segregation claims based solely upon the evidence presented in 1983. *Battle v. Anderson*, No. 72-95-C (E.D. Okla. Dec. 22, 1989). Again, the court of appeals reversed and remanded for further evidentiary proceedings. *Battle v. Anderson*, No. 90-7012 (10th Cir. Oct. 3, 1991). The district court has yet to conduct those proceedings.

Construing the respondents' motion in the district court as one filed pursuant to Federal Rule of Civil Procedure 60(b)(5), the court of appeals held that the district court's summary disposition of the motion was a "[f]ailure to afford due process protections [and, therefore,] constitute[d] an abuse of the district court's discretion." *Id.* slip op. at 2. The court of appeals ordered the district court to hold a hearing to determine the issues raised by the respondents' motion and to determine whether the injunctions should be dissolved. *Ibid.*

5. On remand the district court directed the parties to file briefs "on the issue of whether or not this court should dissolve the prior injunctions in this case as a matter of law." *Battle v. Fields*, No. 72-95-C (E.D. Okla. Sept. 21, 1995) (minute order). Petitioners then moved for the first time since 1979 to dissolve the injunctions. R. 162. Respondents, however, submitted allegations of systemic violations of the injunctions, including uncontested allegations that in early 1995 OSP resumed housing inmates in the condemned cellhouses. R. 165.[7] Respondents also urged that an evidentiary hearing regarding present conditions in OSP was required by the court of appeals' remand. *Ibid.* The United States similarly argued that an evidentiary hearing was necessary to facilitate the "inherently complex and fact-intensive inquiry" into the respondents' allegations, and to determine whether the

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[7] Petitioners have never disputed that they resumed using the condemned cellhouses in early 1995, and at a hearing before the district court on Sept. 26, 1996, petitioners acknowledged that in August 1995 an inmate in the condemned East Cellhouse at McAlester died when he was accidentally electrocuted in his cell as a result of faulty electrical wiring.

injunctions should be dissolved. R. 161 at 4. Respondents also filed applications to show cause why petitioners should not be held in contempt for their use of the condemned cellhouses and triple celling of inmates at the Mabel Bassett Correctional Center. R. 166, 174.

However, the district court entered an order on November 15, 1995, dissolving the injunctions. Pet. App. D1-4. The district court first concluded that "oral argument and an evidentiary hearing are unnecessary." Pet. App. D2. It then readopted the findings it made in its November 17, 1994 order, "dissolve[d] the prior injunctions entered herein, and dismiss[ed] this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit in 1986." Pet. App. D4.

6. The court of appeals stayed the district court's order dissolving the injunctions pending appeal. *Battle v. Fields*, No. 95-7164 (10th Cir. Dec. 18, 1995) (order granting stay pending appeal). In March 1996 the court of appeals again vacated the district court's order and remanded the case "for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion . . . to dissolve the injunctions and dismiss the case." Pet. App. B6. The court of appeals rejected petitioners' contention that the injunctions were dissolved in 1983 when the district court dismissed the case except for the issue concerning racial segregation. Pet. App. B4. The court specifically noted that it "[has] previously affirmed the district court's continuing jurisdiction over this litigation and [has] explicitly recognized the continuing viability of the injunctions entered by the

court." Pet. App. B4-5. (citing *Battle*, 788 F.2d 1421, 1428 n. 5 (10th Cir. 1986), and *Battle*, 708 F.2d 1523, 1538-39 n. 4 (10th Cir. 1983), *cert. dismissed*, 465 U.S. 1014 (1984)).

The court of appeals also disagreed with the district court's conclusion that "changed legal standards make an evidentiary hearing futile and unnecessary." Pet. App. B5. The court explained:

> In a case like this the validity of the parties' allegations and the propriety of dissolving the injunctions and dismissing the case cannot be properly determined *without* an evidentiary hearing. * * * To the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions.

Ibid. (citations omitted) (emphasis in original). The court also ordered that the case be reassigned to another judge upon remand. Pet. App. B7.

7. On April 26, 1996, following the court of appeals' decision, Congress enacted the Prison Litigation Reform Act of 1995 (Title VIII of the Omnibus Consolidated Rescissions and Appropriations Act of 1996), Pub. L. No. 104-134, 110 Stat. 1321-66 (PLRA).

8. On June 5, 1996, upon remand and reassignment, the district court ordered the parties initially to brief the applicability of the PLRA to this case. R. 2. Petitioners then proceeded to file a motion in the district court seeking to dissolve all existing injunctions, including the injunction against racial segregation, under section 802 (a) of the PLRA (to be codified at 18 U.S.C. § 3626(b)(2)). Defendants' Brief on Applicability of PLRA and Motion

to Dissolve Injunctions and Terminate All Prospective Orders with Brief, *Battle v. Fields*, No. 72-95-B (E.D. Okla. filed July 8, 1996).

9. Petitioners also filed a petition for writ of certiorari on June 27, 1996, seeking review of the court of appeals' March 29, 1996 judgment. The petitioners urged this Court to grant certiorari on two grounds: (1) that the court of appeals erred in not dissolving the injunctions, because the district court has lacked jurisdiction over the injunctions since 1983 when it dismissed the case; and (2) that the newly enacted PLRA mandates dissolution of the injunctions. *Battle v. Fields*, No. 95-2090 (U.S. filed June 27, 1996).

10. On October 7, 1996, this Court granted certiorari, vacated the court of appeals' March 29, 1996 decision and remanded for further consideration in light of the PLRA. Pet. App. C1.

11. On the morning of October 8, 1996, James J. Balsamo, an expert in environmental health and safety, accompanied counsel for respondents and the United States on a previously-scheduled tour of the East Cellhouse at McAlester. Mr. Balsamo concluded that conditions in the East Cellhouse are "deplorable," that the cellhouse is not only filthy, but it also presents "a serious and imminent threat to the life and safety of the inmates." R. 53, Tab C-2. With regard to the electrical system, Mr. Balsamo stated, "This issue alone is so life-threatening that the facility should be closed until the electrical system can be inspected by electrical code officials and upgraded to meet current code requirements." *Ibid.* Mr.

Balsamo documented, among other dangers, live electrical connections with exposed wires and stripped insulation in the steel-walled cells. *Ibid.* In addition, Mr. Balsamo observed a total lack of fire protection in the cellhouse, and the persistent lingering odor of smoke caused by inmates burning paper to heat water. *Ibid.* He also noted sewage water running down cell walls, raw sewage spraying from sewer lines into pipe chases, and unplugged sewer lines. *Ibid.* He noted the absence of hot water in the cells, that rusted sinks are the only source of drinking water for inmates, and those sinks are directly connected to the water for the toilets. *Ibid.*[8]

Petitioners, however, moved to strike further proceedings on the basis of this Court's order. In the afternoon of October 8, the district court granted petitioners' motion to strike evidentiary hearings scheduled for

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[8] Inmates interviewed that day gave sworn statements that the cellhouse is filthy, and infested with spiders, ants, roaches, rats, and cats. R. 53, Tab B. Toilets frequently overflow spilling human excrement and refuse into the cellhouse. *Ibid.* The vast majority of cell windows remained uncovered until shortly before Mr. Balsamo's inspection, when some were covered with plywood. *Ibid.* Each cell is lit with a single bulb which must be turned by hand, and the bulbs frequently shoot sparks or shock inmates. *Ibid.* Cell doors do not function properly and frequently trap inmates in their cells or in the doors. *Ibid.* The showers are filthy and lack cold water. *Ibid.* Many inmates have no clean clothes, and have never been issued clothes, sheets or blankets. *Ibid.* Inmates are not eligible to work and thus have no money to buy soap, toothpaste, or other basic hygiene items. *Ibid.* They must rely upon what are called "care packages" for these essentials. Care packages are in short supply. *Ibid.* On the day of Mr. Balsamo's inspection, there was no soap, and only one razor, available in the cellhouse. *Ibid.*

October 15, 1996, and December 2, 1996, and prohibited further discovery. *Battle v. Fields*, No. 72-95-B (E.D. Okla. Oct. 8, 1996) (minute order).

12. On October 18, 1996, respondents simultaneously applied to the district court for a stay of its order, (R. 52), and moved the court of appeals for an order reaffirming its stay of the district court's 1995 dissolution order and an order of partial remand directing the district court to conduct a hearing on petitioners' use of the condemned cellhouses. Appellants' Emergency Motion to Reaffirm Stay and Reassignment, for Order of Partial Remand or Writ of Mandamus and Request for Expedited Consideration, *Battle v. Fields*, Nos. 95-7164, 96-7013 (10th Cir. filed Oct. 21, 1996). The United States moved for a full remand to the district court. United States' Response to Battle Class's Emergency Motion, *Battle v. Fields*, Nos. 95-7164, 96-7013 (10th Cir. filed Oct. 29, 1996).[9]

13. On November 7, 1996, the court of appeals remanded the case to the district court to "consider the newly enacted" PLRA, (Pet. App. A3), and "for a prompt hearing on the underlying motions." *Ibid*. The court of appeals instructed:

> If [the district court] determines that the PLRA is applicable and constitutional, we direct the

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[9] Respondents supplemented the allegations in their motion on Oct. 22, 1996, reporting an incident on Oct. 21, 1996 in which an inmate in the East Cellhouse at McAlester received a serious electrical shock from a light bulb in one of the cells, rendering him unconscious and in need of medical attention. R. 54.

> district court to the requirement of 18 U.S.C. § 3626(e)(1) that the court 'shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.'

Ibid.[10]

14. On November 26, 1996, petitioners moved the court of appeals to recall its mandate pending petitioners' filing of a new petition for writ of certiorari. Appellees' Motion to Recall Mandate and Stay Pending Certiorari Petition, *Battle v. Fields*, Nos. 95-7164, 96-7013 (10th Cir. filed Nov. 26, 1996). The court of appeals granted the motion on November 27, 1996. *Battle v. Fields*, Nos. 95-7164, 96-7013 (10th Cir. Nov. 27, 1996) (order recalling mandate and entering stay).

ARGUMENT

1. The remand which petitioners now seek to have reviewed does not present the question whether any of the injunctions should be lifted, but only whether the court of appeals erred in directing the district court to consider the PLRA and conduct evidentiary hearings on

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[10] The district court promptly rescheduled an evidentiary hearing and resumed discovery. Respondents, the United States, Mr. Balsamo, and William B. Wamsley, a fire protection expert, then toured the Oklahoma State Reformatory at Granite. Both Mr. Balsamo and Mr. Wamsley submitted affidavits that current conditions at both McAlester and Granite place inmates in imminent danger of serious or even fatal injury. United States' Motion for Limited Lifting of Stay, Nos. 96-7013, 95-7164, Exhs. 1, 2 (10th Cir. filed Dec. 17, 1996).

the competing motions to enforce and to lift the injunctions. Where the only issue sought to be reviewed concerns the court of appeals' decision to remand an issue to the district court, the issue does not merit consideration by this Court. This Court ordinarily does not review interlocutory decisions such as the remand for additional proceedings at issue here. *See Virginia Military Inst. v. United States*, 508 U.S. 946 (1993) (opinion of Scalia, J., respecting denial of certiorari); *Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam); R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* § 4.18, at 195-98 (7th ed. 1993). The lack of finality of the judgment below is thus of itself alone a "sufficient ground for the denial of the [writ]." *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

This Court granted certiorari, vacated the decision below and remanded (GVR) for further consideration in light of the PLRA. *Battle v. Fields*, No. 95-2090 (U.S. Oct. 7, 1996). Because the PLRA was enacted after the mandate of the court of appeals, it was not considered by either court below. Petitioners erroneously state that this Court "reversed" the court of appeals' decision, (Pet. 3), suggesting that this Court adjudicated the merits of petitioners' motion to dissolve the injunctions. This Court's GVR, however, did not adjudicate petitioners' motion to dissolve the injunctions.

Only last term, this Court had the opportunity to address the significance and use of a GVR. *Lawrence v. Chater*, 516 U.S. ___, 116 S.Ct. 604, 133 L.Ed.2d 545 (1996). Characterizing the GVR as an "integral part" of the

Court's administration of its discretionary certiorari jurisdiction, this Court specifically noted that the GVR's usefulness in allowing the lower courts to address the impact of new federal statutes upon pending cases. 133 L.Ed.2d at 554. The GVR "assists this Court by procuring the benefit of the lower court's insight before we rule on the merits. . . . " *Ibid.* The GVR is not a determination of the merits of the parties' underlying claims. *Id.* at 554-55.

Upon remand, the court of appeals itself remanded the case to the district court "to consider the newly enacted [PLRA]." Pet. App. A3. The order of remand was an interlocutory decision for additional proceedings, not an adjudication of petitioners' claim that the PLRA entitles petitioners to dissolution of the injunctions. Petitioners' principal contention that the "renewed instructions," (Pet. 9), are erroneous amounts to no more than a restatement of their basic claim that the injunctions should be lifted. However, neither this Court nor the court of appeals ruled on the merits of petitioners' claim. Therefore, the petition does not present the issues argued by petitioners. The court of appeals' interlocutory order of remand does not present any issue other than the propriety of remand. As such, the order does not warrant this Court's review.

It is well-settled that the court of appeals may enter any orders or directions in further progress of a case, not inconsistent with this Court's mandate, as to any question not settled by this Court's decision. *Quern v. Jordan*, 440 U.S. 332 (1979). Such questions may concern whether further proceedings in the district court are necessary. *E.g., Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. ___, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), *upon*

remand, Casey v. Planned Parenthood of Southeastern Penn., 978 F.2d 74, 78 (3d Cir. 1992) (order remanding to the district court for further proceedings). It was well within the court of appeals' discretion to decide whether the issue remanded could be resolved without further proceedings in the district court. *See Watson v. Fort Worth Bk. & Trust*, 487 U.S. 977, 999-1000 (1988). The petition fails to demonstrate that the court of appeals' remand was inconsistent with this Court's mandate or otherwise constituted an abuse of discretion.

2. The order of the court of appeals was, moreover, correct in reaffirming that the district court erred in dissolving the injunctions in 1995. Contrary to the court of appeals' explicit instructions, the district court had dissolved the permanent injunctions without conducting a hearing, and without engaging in the fact-intensive inquiry that this Court's decisions require. *See, e.g., Freeman v. Pitts*, 503 U.S. 467, 491-92 (1992); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384-91 (1992); *Board of Educ. v. Dowell*, 498 U.S. 237, 249 (1991). Institutional injunctions are necessarily temporary in nature. *Missouri v. Jenkins*, 515 U.S. ___, ___, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995). Nonetheless, in cases such as this one, in which a court has identified systemic constitutional violations, a court considering dissolution of existing injunctions must carefully review both past conduct and current conditions to determine whether the injunctions remain necessary or practicable to achieve compliance with the Constitution. *Ibid.* The district court's 1995 order did not satisfy that standard.

Petitioners have never seriously suggested that there is a record of their compliance with the injunctions sufficient to support dissolution of the injunctions. In 1982

when the district court considered modification of the injunctions with respect to double celling, there was no dispute that petitioners had yet to alleviate numerous constitutional violations previously identified by the court; petitioners continued to house inmates in the condemned cellhouses, and racial segregation and discrimination persisted. *Battle v. Anderson*, 708 F.2d at 1528. Petitioners neither contended they had substantially complied with the injunctions nor sought to lift the injunctions.

Similarly, petitioners did not challenge the district court's 1983 findings of widespread violations of the injunctions, nor did petitioners seek to lift the injunctions. *Battle v. Anderson*, 72-95-C, slip op. at 6-7. Petitioners, moreover, could not have justified a request to lift the injunctions. The uncontested record established that numerous unconstitutional practices and conditions persisted. Modification of an injunction "must not create or perpetuate a constitutional violation." *Rufo*, 502 U.S. at 391. Petitioners made no claim that statutory or decisional law had changed with respect to any provisions of the injunctions apart from petitioners' agreement to single cell. *See id.*, at 388. Likewise, petitioners did not claim, nor have they ever claimed, that unforeseen factual circumstances supported dissolution of the injunctions. *See id.*, at 384.

Undaunted by their own history of non-compliance, petitioners have persisted in contending that the district court's 1983 dismissal of the case effectively dissolved the injunctions and divested the courts of jurisdiction over these issues. However, the district court's 1983 decision could not be clearer in expressly ruling that "[a]ll of [this court's] orders and injunctions as modified heretofore

remain in full force and effect." *Battle v. Anderson*, 72-95-C, slip op. 10 (E.D. Okla. Dec. 30, 1983); *Battle v. Anderson*, 788 F.2d at 1428 n. 5. Where, as here, a party alleges violations of an existing injunctive order, the district court clearly possesses jurisdiction to consider that allegation. *See, e.g., Board of Educ. v. Dowell*, 498 U.S. at 246, 250; *cf., Hutto v. Finney*, 437 U.S. 678, 690 (1978). Nor does that jurisdiction dissipate because the court has earlier found that the defendant's affirmative unlawful conduct has ceased. *See Board of Educ. v. Dowell*, 498 U.S. at 248 (court's remedial authority extends to, *inter alia*, remedying the effects of past unlawful conduct); *Freeman v. Pitts*, 503 U.S. at 491 (same); *Milliken v. Bradley*, 433 U.S. 267, 280-82 (1977) (same).

The petition gravely distorts the record in contending that the courts declared OSP "constitutional" in 1982. Pet. 11. The courts made no findings in 1982 or 1983 that petitioners had substantially complied with the remedial orders to the extent practicable, or that, *in the absence of the existing injunctions*, there was no reasonable probability that constitutional violations would recur. The district court's December 1983 decision fairly reflects only that the district court accepted petitioners' promises to alleviate unconstitutional conditions as soon as feasible. *Battle v. Anderson*, No. 72-95-C, slip op. 8-9 (E.D. Okla. Dec. 30, 1983). Accepting those promises, the district court ended its active oversight and discharged the court's monitor, leaving the injunctions in place to secure petitioners' promises. *Id.* at 10. The court of appeals relied on that aspect of the district court's holding in affirming the decision, *Battle v. Anderson*, 788 F.2d at 1428 n. 5, and again, petitioners urged the court of appeals to affirm the

district court's decision to end active supervision of the case, on the grounds that the injunctions would remain in full force and effect. The injunctions have thus remained in effect since that time.

Contrary to petitioners' contention, the district court's December 1983 order did not open the injunctions to attack under Rule 65 of the Federal Rules of Civil Procedure. Pet. 18-19. That order dismissed the case, leaving the injunctions in force. The order did not purport to be nor was it tantamount to a separate injunction. Petitioners' contention that "no one can be sure," (Pet. 19), which injunctions are in place as a result of the district court's 1983 order distorts the clarity in this record of specific, uncontested constitutional violations and specific remedial orders designed to correct those violations. Petitioners themselves proposed the substance of the injunctive orders, and have repeatedly acknowledged their understanding of what those orders require. The district court clearly stated its intent that the previous injunctions not be affected by dismissal of the case. The only lingering uncertainty is the extent to which petitioners' have met their 1983 promises to remedy constitutional deficiencies, not whether petitioners knew what the injunctions required them to do.

3. The court of appeals' order vacating the district court's dissolution of the injunctions and remanding the case to the district court for an evidentiary record remains correct under this Court's mandate to consider the PLRA. Nothing in the PLRA retroactively validates the district court's 1995 decision to terminate relief. The court of appeals recognized that "the PLRA purports to establish a new standard by which prison reform decrees

are to be judged," (Pet. App. A3), and determined that a factual inquiry is appropriate to determine how a purportedly new standard, if applied, would or would not affect the existing injunctions.

Petitioners urge that they are entitled to immediate dissolution of the injunctions, without a hearing, under Section 3626(b)(2) of the PLRA. The PLRA purports to authorize dissolution of court orders which were entered without specific findings of constitutional violations, and without finding that the relief ordered is necessary to remedy the identified constitutional violations. Notably, petitioners do not articulate how this new provision alters the standard by which these remedial orders have been judged since at least 1977. *See Milliken v. Bradley*, 433 U.S. at 282 (Federal courts may not order States, over their objection, to undertake a course of conduct not tailored to curing an adjudicated constitutional violation).

Here, the record is replete with findings that remedial relief was necessary to correct specifically identified constitutional violations. The courts instructed petitioners to correct only those conditions which were clearly unconstitutional under established federal case law. Further, since the inception of the litigation, the courts ensured that the injunctions were narrowly drawn and extended no further than necessary to remedy the constitutional violations. The courts have consistently permitted petitioners to propose plans to remedy the constitutional violations in the manner least intrusive to the State of Oklahoma.[11]

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[11] Although petitioners contend that the injunctions obligate them to do more than the Constitution requires in

Finally, petitioners cannot support their contention that the PLRA absolves courts of their responsibility to address evidence that injunctive relief may still be necessary. Under Section 3626(b)(3), injunctive relief does not terminate

> if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

Here, respondents have made credible allegations that current conditions of confinement violate respondents' rights under the Eighth Amendment as well as the existing injunctions. One inmate has died and hundreds are in physical danger by being housed in the condemned cellhouses. R. 52. Respondents have alleged that the cellhouses are filthy and infested with rodents and insects, and that the cellhouses have dangerous electrical wiring. *Ibid.* The cellhouses leak rusty rainwater and raw sewage,

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requiring petitioners to meet national standards for public health, corrections, and life safety, (Pet. 17-18), petitioners conceded in 1978 that those standards already applied to their operations, *Battle v. Anderson*, 457 F. Supp. at 727, and further, petitioners themselves proposed that those requirements be made part of the injunctions in order to remedy the uncontested findings of constitutional violations. It can hardly be argued that these provisions in the injunctions impermissibly interfere with the State's administration of its prison system.

frequently flood with raw human excrement and refuse, and have windows which are broken, or covered with plywood if covered at all. There is a complete lack of fire protection. Cell doors function improperly, frequently trapping inmates inside or within the doors. Prisoners live in these conditions without clean tap water, without drinking water, without adequate showers, and without adequate supplies of basic items such as soap, towels, and clean clothing necessary to maintain even a minimal level of hygiene and prevent the spread of infection and disease. *Ibid.*[12]

Evidentiary hearings are also necessary before the district court can determine that the PLRA warrants dissolution of the injunctions against racial discrimination and segregation. In the March 1996 order the court of appeals did not address the injunctions against discrimination and segregation, because the district court excluded those injunctions from its dissolution order. Pet. App. D4. A remand is particularly appropriate in light of the allegations of current conditions and the patently deficient record that has existed since 1983.

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[12] It is clear from the record that respondents' allegations are not "new," as contended by petitioners. Pet. 13. Petitioners conceded nearly twenty years ago that the condemned cellhouses are unfit for human habitation. Allegations that those same conditions remain and may now be worse from the passage of time hardly constitute "new" allegations.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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